

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

-v-

ANDREY KOSTIN et al.,

Defendants.

Case No. 1:24-cr-00091 (GHW)

**DECLARATION OF DAVID C. RYBICKI IN SUPPORT OF DEFENDANT
VADIM WOLFSON'S MOTION TO SUPPRESS DEVICE PASSCODE AND RELATED
FRUITS**

Pursuant to 28 U.S.C. § 1746, I, David C. Rybicki, declare under oath as follows:

1. I am a partner at K&L Gates LLP in Washington, D.C., and counsel to Vadim Wolfson.
2. I make this Declaration in support of Mr. Wolfson's Motion to Suppress Device Passcode and Related Fruits (the "Motion").
3. Annexed as Exhibit A hereto is a true and correct copy of the Search and Arrest Warrant for Vadim Wolfson (the "Warrant") (USAO_00000662), which shows that law enforcement was authorized to execute the warrant "on or before March 6, 2024 in the daytime 6:00 a.m. to 10:00 p.m." The Warrant identifies the property to be searched and the particular things to be seized. The affidavit in support of the Warrant specifically states that the FBI has no authority to "compel WOLFSON to provide a numeric passcode."
4. Annexed as Exhibit B hereto is a true and correct copy of the FD-302 memorializing the arrest of Vadim Wolfson on February 22, 2024 (WOLFSON_00000001).

5. I have personal knowledge that Mr. Wolfson has been aware of the criminal investigation in this matter since 2022 and has engaged counsel and produced documents to the government in connection with the investigation.
6. I am aware that prior to Mr. Wolfson's arrest, but after he was notified of the criminal investigation, Mr. Wolfson left the United States, traveled internationally, and returned without incident. He had notified FBI of his international travel in advance.
7. I have reviewed video WOLFSON_00000348 of Mr. Wolfson's arrest, which portrays the following:
 - a. Early in the morning of February 22, 2024, Mr. Wolfson is handcuffed by law enforcement with his hands behind his back while only wearing his underwear.
 - b. Mr. Wolfson is left handcuffed for around fifteen minutes, standing on the sidewalk near his house, in his underwear, before agents finally provide him with a t-shirt and athletic pants.
8. I have reviewed video WOLFSON_00000349 of Mr. Wolfson's arrest, which portrays the following:
 - a. Approximately three minutes after being provided with clothes, Mr. Wolfson is placed in the back seat of a law enforcement vehicle with his hands cuffed behind his back. Mr. Wolfson expresses how uncomfortably tight the handcuffs are. There is no indication that any agent read Mr. Wolfson his rights by this point in time.
 - b. A law enforcement agent can be heard asking someone who appears to be FBI Special Agent [REDACTED] whether he wanted to "sit here for a few [minutes]" to talk to [Mr. Wolfson] to try to get him to give you his passcode." SA [REDACTED] declines to do so and indicates that they should "figure out where his phone is."

The colleague then asks SA [REDACTED], "You wanna ask where his phone is?" SA [REDACTED] responds: "Yeah." The colleague suggests that this information was needed because someone else had exited the house with "three phones in her hand."

c. SA [REDACTED] then approaches Mr. Wolfson and has the following exchange:

SA [REDACTED]: Um, so, we have a, uh, search warrant for your phone.

Mr. Wolfson: It's upstairs.

SA [REDACTED]: It's upstairs?

Mr. Wolfson: Where I sleep.

SA [REDACTED]: In your bedroom? On the nightstand?

Mr. Wolfson: Yes.

SA [REDACTED]: Okay.

Mr. Wolfson: It's charging.

SA [REDACTED]: [to another agent] Hey [REDACTED], it's on the nightstand, the phone, it's charging on the nightstand in the bedroom.

Other Agent: Color?

SA [REDACTED]: [to Mr. Wolfson] Color?

Mr. Wolfson: It's in [a] white case, and can someone bring my glasses as well please?

Other Agent: Where are your glasses? Right next to it?

Mr. Wolfson: Yes.

SA [REDACTED]: Uh and then for your phone, is it facial recognition?

Mr. Wolfson: Yes.

SA [REDACTED]: Okay and there's also a passcode as well?

Mr. Wolfson: One six one six.

9. I have reviewed video WOLFSOON_00000350 of Mr. Wolfson's arrest, which portrays the following:

- a. Mr. Wolfson is handcuffed in the law enforcement vehicle when SA [REDACTED] tells Mr. Wolfson, “We have an arrest warrant. I’ll show you the paperwork when we have a chance here. Like I said we have a search warrant for your phone. They’ll be taking that. And then there’s a few other things on the search warrant that we’re looking for—electronic devices and three paintings.”
- b. SA [REDACTED] then begins the *Miranda* process and presents Mr. Wolfson with the advice-of-rights form, Form FD-395. He notes that he has copies of in English and Russian.
- c. Mr. Wolfson indicates a preference for Russian, but it is unclear which version of the Form FD-395 is used.
- d. SA [REDACTED] asks a still-handcuffed Mr. Wolfson about his home address to fill out the Form FD-395.
- e. There is a brief discussion about the date and time for the Form FD-395, before an agent could be heard saying that “it’s a six-digit passcode.”
- f. SA [REDACTED] then interrupts the *Miranda* process and says to Mr. Wolfson: “It’s a six-digit passcode. What’s the passcode to your phone?”
- g. Mr. Wolfson responds to SA [REDACTED]’s question by providing the complete passcode, which was the same as the passcode originally provided, but with two additional digits in the middle.
- h. There is no indication that SA [REDACTED] had read Mr. Wolfson his rights at the time SA [REDACTED] resumed questioning Mr. Wolfson about his phone passcode.

- i. There is no indication that Mr. Wolfson, who was looking at Form FD-395 when the questioning re-started, had any meaningful opportunity to review his rights himself.
- j. Moreover, Mr. Wolfson had previously requested that agents provide him with his glasses, and it is not clear that they had even done so by the time the document was placed in front of him.

10. Annexed as Exhibit C hereto is a true and correct copy of the technical report regarding Mr. Wolfson's phone and iPad (WOLFSON_00000343-WOLFSON_00000346) dated March 6, 2024 (the "Technical Report"), which provides:

- a. That Mr. Wolfson's phone and iPad share the same passcode and this passcode was the sole means used to access both devices;
- b. That Mr. Wolfson's phone and iPad were accessed using the passcode; and
- c. That the phone and iPad passcode were "provided by the owner of" the devices.

11. The Technical Report and the videos of Mr. Wolfson's arrest that include his interrogation regarding the passcode were not provided in the government's April 5, 2024, production of materials regarding Mr. Wolfson's arrest. These materials were not provided to defense counsel until November 6, 2024, after I asked the prosecution team to proffer the testimony that the FBI would offer if asked how agents gained access to Mr. Wolfson's iPhone and iPad.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 25, 2024
Washington, D.C.

/s/ David C. Rybicki
David C. Rybicki

EXHIBIT A

[FILED UNDER SEAL]

EXHIBIT B

[FILED UNDER SEAL]

EXHIBIT C

[FILED UNDER SEAL]